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Memorandum

To: Interested Parties
From: Joan Gorga, Director, Determination of Need Program
Date: January 20, 2011
Subject: Increase of Bed Capacity by 12 Beds Limited to One per Facility

Applicants for nursing facility replacement and renovation have historically been permitted to increase their number of licensed beds by using a 12-bed exemption available under 105 CMR 100.020, definitions of Expansion and Substantial Change in Services. Notwithstanding the excess of nursing home beds and the moratorium on the addition of any new beds, the DoN statute and regulation permit a facility to add 12 beds or fewer as a one-time exception to the moratorium. Applicants found it practical to utilize the 12-bed exemption when planning a comprehensive expansion since the services of architects and contractors were difficult to enlist for a small scale project.

As smaller, older homes have closed, holders of those licenses have taken beds out of service, often holding those beds for many years before selling them to existing nursing facility owners who have added these beds to their facilities through the Guidelines for Renovation and Replacement approved in May 1993. It has come to the attention of the Determination of Need Program and the Department that in at least one instance, a nursing facility project that consolidated two facilities interpreted the 12-bed exemption to add 24 beds, 12 for the existing facility and 12 for the smaller facility being acquired. This was an erroneous interpretation and should not have been permitted.

The DoN regulation describes the 12-bed exemption in the definition of "substantial change in service" in 105 CMR 100.020 as follows:

- (2) for any health care facility other than an acute care hospital:
 - (b) any increase in bed capacity other than a single increase or cumulative series of increases, totaling not more than 12 beds, *to the licensed bed capacity of the entire health care facility*; (emphasis added).

Thus, the regulation, which applies at the time a facility is undertaking renovation or adding the beds, makes it clear that this one-time exemption applies to the licensed bed capacity of the health care facility undergoing renovation or replacement. The 12-bed exception does not confer a right to additional beds but rather an exemption from DoN requirements at the time a facility undergoes renovation. Thus, the 12-bed exemption applies to the facility at the time renovations are undertaken, on a one-time basis.

The Guidelines for Nursing Facility and Renovation are also clear in interpreting the exemption, stating on page six that an applicant proposing to consolidate two or more facilities into one newly constructed facility may seek only a single 12-bed add-on exemption for the replacement facility, and only to the extent that none of the facilities being replaced have made use of this exemption in the past.

In summary, the acquisition of nursing home beds and subsequent addition of them to an existing facility is limited to the actual number of beds that were licensed at the time of acquisition. Any consideration of the 12-bed exemption applies to the acquiring facility at the time of renovation, and to its license only.